IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Arb. Case No. 24 of 2007.

Date of Decision: 20th November, 2007.

Paveljeet Singh .. Claimant-petitioner.

Versus

HP State Electricity Board and others .. Respondents.

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The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

Whether approved for reporting?[1]

For the petitioner: Mr. Raman Sethi, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate.

V.K. Gupta, Chief Justice (Oral)

Reply has been filed. Clause 45 of the terms and conditions of the contract is the arbitration agreement between the parties. This Clause prescribes a detailed procedure for, initially approaching the Chief Engineer for obtaining written instructions, and thereafter appointment of Arbitrator by the H.P. State Electricity Board. It is the undisputed case of the parties that the petitioner before approaching this Court had issued a notice dated 9th April, 2007 upon the respondents, after complying with and in terms of the aforesaid Clause 45 of the agreement for appointment of an Arbitrator by the Board. It is also the undisputed case of the parties that till 6th July, 2007, when the petitioner had filed the present petition in this Court, the respondents had not taken any action upon the aforesaid request of the petitioner. This case was listed in this Court on 12th July, 2007 for the first time when Mr. Shrawan Dogra, Advocate, had appeared

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[1] Whether the reporters of Local Papers may be allowed to see the judgment?

for the respondents. Till as late as 12th July, 2007 also when the respondents had the knowledge about the pendency of this petition in this Court no Arbitrator was appointed by them.

In the reply filed by the respondents on 6th November, 2007 it has been stated that an Arbitrator has been appointed by the respondents vide communication/order No. HPSEB CESHPDB-13(PS) 07-3265-69 dated 25th August, 2007. It is clear that the Arbitrator has been appointed during the pendency of the proceedings in this Court in this petition, much after the respondents had derived the knowledge about this petition having been filed in this Court.

Apart from the fact that the Arbitrator has been appointed by an authority who under Clause 45 (supra) did not have power or jurisdiction to appoint the Arbitrator, in view of the law laid down by this Court following the dicta of the Supreme Court in various cases, in **SSJV Projects Private Limited** v. **HP State Electricity Board and another**, reported in 2006(2) SLC 166 and the judgment dated 3rd October, 2007 in the case of **M/S. Ayush Construction Pvt. Ltd.** v. **State of Himachal Pradesh and others** (Arb. Case No.26 of 2007), the respondents have forfeited their right to appoint the Arbitrator.

Because the respondents have forfeited their right to appoint the Arbitrator, this Court in exercise of power and jurisdiction vesting in it under Section 11 (6) of the Arbitration and Conciliation Act, 1996 hereby, with the agreement of the parties, appoints Shri Justice R.L. Khurana (Retired), a former Judge of this Court, a Single Member Arbitral Tribunal to adjudicate upon the disputes between the parties. The parties shall file their claims and counterclaims before the learned Arbitrator who shall enter upon the reference immediately and pass the arbitral award without any delay.

The Arbitrator's fee in lump-sum (for the entire case) is fixed at Rs.50,000/- which shall be paid to him in equal shares by the parties. This fee shall include the secretarial and other expenses, but shall exclude the travelling, boarding and lodging expenses. The venue of the arbitration proceedings shall be either Noida or Shimla. If in connection with the conduct of the arbitration proceedings the learned Arbitrator has to visit Shimla, he shall be provided accommodation and all other facilities in the Guest House of the respondents-Board for which the petitioner has no objection. Apart from this facility, the Arbitrator shall be entitled to a fee of Rs.10,000/- for every visit to Shimla, apart from of course being paid the actual travelling and other expenses. The parties shall share the payment of these amounts also in equal shares.

etition is disposed of.

November 20, 2007. **(V.K. Gupta), C.J.**
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